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Message Text

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PAGE 01 TEL AV 00245 121208Z
ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-04 H-01
INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
USIA-06 MCT-01 DHA-02 SCA-01 SY-05 /077 W
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P 121104Z JAN 77
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TO SECSTATE WASHDC PRIORITY 4406
INFO AMEMBASSY ALGIERS
AMEMBASSY AMMAN
AMEMBASSY BONN
AMEMBASSY CAIRO
AMEMBASSY DAMASCUS
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
AMEMBASSY ROME

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E.O. 11652: N/A
TAGS: PFOR, PINS, FR, GW, IS
SUBJECT: LEGAL ASPECTS OF THE DAOUD CASE

REFS: (A) BONN 517, (B) PARIS 946, (C) STATE 6102

1. WE DISCUSSED THE DAOUD CASE WITH THE MFA LEGAL ADVISOR, DR. MEIR ROSENNE. DR. ROSENNE (WHO, IRONICALLY, OBTAINED HIS PH.D. FROM THE SORBONNE AFTER A STUDY OF FRENCH EXTRADITION PROCEDURES) SAID THE GOI HAD NOT YET RECEIVED ANY OFFICIAL COMMUNICATION FROM FRANCE REGARDING DAOU'S RELEASE,ITS VIEWS OF THE LEGAL ISSUES, OR THE TEXT OF ANY COURT DECISION. HIS COMMENTS WERE, THEREFORE, BASED ON MEDIA REPORTING OF STATEMENTS MADE BY FRENCH OFFICIALS.

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PAGE 02 TEL AV 00245 121208Z

2. FIRWT OF ALL THERE CAN BE NO QUESTION OF THE APPLICABILITY OF THE EXTRADITION TREATY BETWEEN FRANCE AND ISRAEL TO THE CRIME IN QUESTION AS FAR AS DATES ARE CONCERNED. THE TREATY ENTERED INTO FORCE NOVEMBER 14, 1971 AND, IN ANY CASE, SECTION 23 OF THE TREATY PROVIDES THAT EXTRADITION CAN BE GRANTED FOR CRIMES COMMITTED PRIOR TO ENTRY INTO FORCE OF THE TREATY.

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3. ANOTHER REPORTED ARGUMENT OF THE FRENCH MINISTRY OF JUSTICE IS THAT THE ALLEGED CRIME WAS COMMITTED IN 1972 WHILE THE ISRAELI LAW GIVING ISRAELI COURTS JURISDICTION OVER SUCH CRIMES WAS ONLY ENACTED IN 1973; THIS WOULD THEREFORE, BT A RETROACTIVE APPLICATION. THIS IS NOT TRUE ROSENNE CLAIMED. THE ISRAELI LAW GIVING ISRAELI COURTS COMPETENCE OVER CRIMES COMMITTED ABROAD AGAINST ISRAELI NATIONALS WAS ENACTED IN MARCH 28, 1972. THE LAW PROVIDES, IN SUBSTANCE, THAT COURTS IN ISRAEL ARE COMPETENT TO TRY PERSONS IN ISRAEL FOR ACTS COMMITTED ABROAD, WHICH WOULD HAVE BEEN CRIMES IF COMMITTED IN ISRAEL, WHEN THOSE ACTS WERE COMMITTED AGAINST NATIONALS OF ISRAEL.

4. ROSENNE NOTED FRENCH CLAIMS THAT FRENCH COURTS ARE NOT COMPETENT TO CONSIDER THE ISRAELI REQUEST FOR EXTRADITION BECUASE FRENCH LAW COVERING TERRORISM WAS ENACTED ONLY IN 1975 AND THE ALLEGED CRIME WAS COMMITTED IN 1972. HOWEVER, SECTION 55 OF THE FRENCH CONSTITUTION OF 1958 STATES THAT, IN CASES OF CONFLICT BETWEEN INTERNATIONAL TREATIES AND DOMESTIC LAW, INTERNATIONAL TREATIES HAVE PRIORITY AND THIS PROVISION WOULD GOVERN IN THIS CASE.

5. ALL PROCEEDINGS IN THE DAOUD CASE WERE IN CAMERA AND ISRAELI PARTICIPATION WAS EXCLUDED, ALTHOUGH ISRAEL HAD SUBMITTED A REQUEST FOR PROVISIONAL ARREST IN ACCORDANCE WITH THE TREATY. ACCORDING TO SECTION 10 OF THE TREATY, EITHER PARTY MAY REQUEST PROVISION ARREST; IT THEN HAS 60 DAYS TO SUBMIT ITS FORMAL REQUEST FOR EXTRADITION.
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6. ROSENNE SUMMED UP THAT THERE IS NO DOUBY IN HIS VIEW THAT THE FRENCH RELEASE OF DAOUD WAS ILLEGAL AND IN VIOLATION OF SPECIFIC PROVISIONS OF THE TREATY OF EXTRADITION.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, EXTRADITION, TERRORISTS, PRISONERS RELEASE
Control Number: n/a
Copy: SINGLE
Sent Date: 12-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977TELAV00245
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770011-0966
Format: TEL
From: TEL AVIV
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770157/aaaabxyf.tel
Line Count: 103
Litigation Code IDs:
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Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
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Office: ACTION NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 BONN 517, 77 PARIS 946, 77 STATE 6102
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 12-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3611162
Secure: OPEN
Status: NATIVE
Subject: LEGAL ASPECTS OF THE DAOUD CASE
TAGS: PFOR, PINS, FR, GE, IS, (DAOUD, ABU), (ROSENNE, MEIR)
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/f44670da-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009